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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1943

No. 19

FRANK ROBERTS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI, FILED FEBRUARY 20, 1943.

CERTIORARI GRANTED APRIL 5, 1943.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1943

No. 19

FRANK ROBERTS, PETITIONER,

vs.

THE UNITED STATES OF AMERICA

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE FIFTH CIRCUIT

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[fol. a] [Captions omitted]

[fols. 1-2]

**IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHEASTERN DIVISION OF THE
NORTHERN DISTRICT OF ALABAMA, OCTOBER
TERM, A. D. 1937**

INDICTMENT FOR VIOLATION OF SECTION 409, TITLE 18, U. S. C.
—Filed February 16, 1938—

Count One

The Grand Jurors of the United States, duly elected, impaneled, sworn and charged to inquire for the Northeastern Division of the Northern District of Alabama, upon their oaths present:

That heretofore, to-wit, on or about the 12th day of January, 1938, at or near Decatur, in the County of Morgan, State of Alabama, and within the jurisdiction of this Court, Embry Dancy, alias Henry Dancy, Nulan Wagner, and Frank Roberts, whose names are otherwise unknown to the Grand Jurors, did then and there feloniously steal, that is to say, did unlawfully take and carry away from a freight house, to-wit, the Southern Railway Freight House, certain goods, namely, one case of Avalon cigarettes and two cases of North State tobacco, a further description of which is to the Grand Jurors unknown, which said cigarettes and tobacco were moving as, and which were a part of, and which constituted an interstate shipment of freight, which were being shipped by the Brown-Williams Tobacco Company from Winston-Salem, in the State of North Carolina, to the Camp Exchange, C. C. C. Camp Co. 2449, at Moulton, in the State of Alabama, with the intent to convert the same [fol. 3] to their own use; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Count Two

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further present:

That at the time and place aforesaid, and within the jurisdiction aforesaid, the said Embry Dancy, alias Henry

Dancy, Nulan Wagner, and Frank Roberts, whose names are otherwise unknown to the Grand Jurors, did then and there unlawfully receive and have in their possession certain goods, namely, one case of Avalon cigarettes and two cases of North State tobacco, a further description of which is to the Grand Jurors unknown, which had been stolen from a freight house, to-wit, the Southern Railway Freight House, which said cigarettes and tobacco were being shipped by the Brown-Williams Tobacco Company from Winston-Salem, in the State of North Carolina, to the Camp Exchange, C. C. C. Camp Co. 2449, at Moulton, in the State of Alabama, knowing the same to have been stolen; contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

Jim C. Smith, United States Attorney.

A true bill.

C. C. McGraw, Foreman of the Grand Jury.

Filed in open Court this 16 day of February, A. D. 1938.

[fol. 4] IN UNITED STATES DISTRICT COURT

8505

UNITED STATES OF AMERICA

VS.

FRANK ROBERTS

ARRAIGNMENT AND PLEA—April 25, 1938

This cause coming on to be heard this day, comes the United States of America, by District Attorney, comes [fol. 5] also the defendant, Frank Roberts, in his own proper person, and by counsel, and being arraigned in open Court upon the indictment filed herein against him, charging an alleged violation of Section 409, Title 18, U. S. C.—Theft from Interstate Shipment of Freight—taking and carrying from a freight house, certain goods, which were moving as, and which were a part of, and which constituted an interstate shipment of freight, with the intent to convert the same to their own use; possessing certain goods, which

had been stolen from a freight house, knowing the same to have been stolen—pleads guilty thereto as charged.

Thereupon, for good cause shown, it is ordered by the Court that sentence of the Defendant, Frank Roberts be and is hereby continued until April 26th, 1938, at 2:00 o'clock, P. M.

IN DISTRICT COURT OF THE UNITED STATES, NORTHERN
DISTRICT, ALABAMA, NORTHEASTERN DIVISION

No. 8505 Criminal Indictment in Two Counts for Violation
of U. S. C., Title 18, Secs. 409

UNITED STATES

v.

FRANK ROBERTS

JUDGMENT AND COMMITMENT—April 26, 1938

On this 26th day of April, 1938, came the United States Attorney, and the defendant Frank Roberts appearing, in proper person, and by counsel and,

[fol. 6-7] The defendant having been convicted on his plea of guilty of the offense charged in the indictment in the above-entitled cause, to wit, take and carry away from a freight house certain goods which were a part of, and which constituted an interstate shipment of freight, with intent to convert same to his own use, and possess said goods well knowing them to have been stolen, and the defendant having been now asked whether he has anything to say why judgment should not be pronounced against him, and no sufficient cause to the contrary being shown or appearing to the Court, It Is by the Court.

Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General for imprisonment in an institution of the penitentiary type to be designated by the Attorney General or his authorized representative for the period of Two (2) Years, and to pay a fine of Two Hundred Fifty (\$250.00) Dollars, to stand committed on May 25, 1938, and that said defendant be further imprisoned until payment of said fine, or until said defendant is otherwise discharged as provided by law.

It is Further Ordered that said prison sentence imposed be suspended and defendant placed on probation for a period of Five (5) Years, conditioned upon defendant paying the fine imposed.

It Is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) C. B. Kennamer, Judge.

[fol. 8] IN DISTRICT COURT OF THE UNITED STATES, NORTHERN
DISTRICT OF ALABAMA, NORTHEASTERN DIVISION

No. 8050 Criminal Indictment in two counts for violation of
U. S. C. A., Title 18, Secs. 409

UNITED STATES OF AMERICA

v.

FRANK ROBERTS

JUDGMENT AND COMMITMENT—June 19, 1942

On this 19th day of June, 1942, came the United States Attorney, and the defendant Frank Roberts appearing in proper person upon the complaint of the Probation Officer charging violation of the terms of his probation, and

The defendant having been convicted on his plea of guilty heretofore entered on April 25, 1938 of the offense charged in the indictment in the above-entitled cause, to-wit: did unlawfully take and carry away certain goods which constituted an interstate shipment of freight with intent to convert said goods to his own use, Count 1; unlawfully receive and possess certain goods that had been stolen from an interstate shipment of freight, well knowing that said goods were stolen, Count 2; and the defendant was by the Court, heretofore on April 26, 1938 committed to the custody of the Attorney General for imprisonment in an institution of the penitentiary type to be designated by the Attorney General or his authorized representative for the period of Two (2) Years and fined Two Hundred Fifty (\$250.00) Dollars to stand committed, which said prison sentence was suspended and defendant placed on probation

for the period of Five (5) Years, and said fine of Two Hundred Fifty (\$250.00) Dollars was paid and the defendant having been now asked whether he has anything to say why [fol. 9] judgment should not be pronounced against him revoking his said probation and putting his suspended sentence into effect, and no sufficient cause to the contrary being shown or appearing to the Court, and it appearing to the Court that the defendant has violated the terms of his said probation, It is by the Court

• Ordered and Adjudged that the probation of the said defendant be and it hereby is revoked and sentence heretofore suspended is hereby set aside and,

It Is by the Court Further Ordered and Adjudged that the defendant, having been found guilty of said offenses, is hereby committed to the custody of the Attorney General of the United States or his authorized representative for the period of Three (3) Years, or until said defendant is otherwise discharged as provided by law.

It is Further Ordered that the Clerk deliver a certified copy of this judgment and commitment to the United States Marshal or other qualified officer and that the same shall serve as the commitment herein.

(Signed) T. A. Murphree, United States District Judge.

[fol. 10] IN UNITED STATES DISTRICT COURT FOR THE NORTH-EASTERN DIVISION OF NORTH ALABAMA

[Title omitted]

MOTION FOR NEW TRIAL—Filed June 22, 1942

Comes Frank Roberts, the defendant, and files the following motion, and moves the Court to set aside the verdict of the jury and the judgment of the Court in this cause, and in support of said motion files the following grounds:

1st. Because the verdict of the jury was not supported by the evidence.

2nd. Because the defendant was sentenced June 19, 1942, without a legal conviction.

3rd. Because the defendant neither plead guilty or had a jury trial for his sentence June 19, 1942.

4th. The judgment of the Court was void because the power to sentence based upon legal authority was not vested in the Court until a legal conviction of the defendant was had.

J. N. Powell, Attorney for Defendant.

[fol. 11] IN UNITED STATES DISTRICT COURT

PETITION TO WITHDRAW MOTION FOR NEW TRIAL—Filed June 24, 1942

Comes now the defendant, Frank Roberts, appearing by counsel and shows unto the Court that heretofore, to-wit, the 22nd day of June, 1942, a motion for a new trial was filed, and now

The defendant, Frank Roberts, moves the Court to allow the said defendant to withdraw his said motion for a new trial and to file a notice of appeal to the Circuit Court of the United States for the Fifth Circuit.

This 24th day of June, 1942.

J. N. Powell, Atty. for Deft.

IN UNITED STATES DISTRICT COURT

ORDER ALLOWING DEFENDANT TO WITHDRAW MOTION FOR NEW TRIAL—Filed June 24, 1942

It appearing to the Court that on, to-wit, the 22nd day of June, 1942, the defendant in this cause filed a motion for a new trial, and

The defendant has this day filed a motion to be allowed to withdraw his said motion for a new trial, and the Court [fol. 12] is of the opinion that said motion to withdraw should be granted; it is, therefore,

Ordered that said defendant, Frank Roberts be, and he hereby is, allowed to withdraw his said motion for a new trial.

This the 24th day of June, 1942.

T. A. Murphree, United States District Judge.

IN DISTRICT COURT OF THE UNITED STATES FOR THE NORTH-
EASTERN DIVISION OF THE NORTHERN DISTRICT OF ALABAMA

[Title omitted]

NOTICE OF APPEAL—Filed June 24, 1942.

Name and address of appellant—Frank Roberts.

Name and address of appellant's attorney—J. N. Powell,
Hartselle, Alabama.

Offense—Title 18, Section 409.

Date of judgment—June 19, 1942.

Description of judgment or sentence—Probation revoked
and suspended sentence of two years set aside and imposing
three years.

Defendant now on bail.

[fol. 13-15] I, the above-named Appellant, hereby appeal
to the United States Circuit Court of Appeals for the Fifth
Circuit from the judgment above-mentioned on the grounds
set forth below.

Frank Roberts, Appellant, By J. N. Powell, Attorney
for Appellant.

Date—June 24, 1942.

Grounds of Appeals

1. The Court erred *in that* in setting aside the former
judgment of two years and imposing instead a sentence of
three years.

I hereby certify that a copy of the foregoing notice of
appeal was served on the Honorable Jim C. Smith, United
States Attorney, this the 24th day of June, 1942.

J. N. Powell, Atty. for Deft.

Bond on Appeal for \$1,500—approved and filed June 24,
1942. Omitted in printing.

[fol. 16] IN UNITED STATES DISTRICT COURT

ORDER TO RELEASE DEFENDANT PENDING APPEAL—Filed June 25, 1942

It appearing to the Court that on, to-wit the 19th day of June, 1942, an order was entered revoking the probation of the above-named defendant and setting the suspended sentence of two years aside and imposing a sentence of three years, and

It further appearing that the defendant was on, to-wit, the 19th day of June, committed to the Madison County Jail, and

It further appearing that on, to-wit, the 24th day of June, 1942, the defendant was delivered to the United States Penitentiary at Atlanta, Georgia, and

It further appearing that on, to-wit, the 24th day of June, 1942, and within the time required by law, the defendant filed notice of appeal to the United States Circuit Court of Appeals for the Fifth Circuit and this Court approved the said defendant's appeal bond, now

It is Ordered that the defendant, Frank Roberts, be released pending said appeal from the custody of the Warden of the United States Penitentiary, at Atlanta, Georgia, upon the receipt of a certified copy of this order:

[fol. 17] The Clerk of this Court is Directed to transmit a certified copy of this order together with a certified copy of the appeal bond of the said defendant to the warden, United States Penitentiary, Atlanta, Georgia.

This the 25th day of June, 1942.

T. A. Murphree, United States District Judge.

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
NORTHEASTERN DIVISION OF THE NORTHERN DISTRICT OF
ALABAMA

[Title omitted]

NOTICE OF APPEAL TO THE UNITED STATES COURT OF APPEALS
—Filed July 24, 1942

Name and Address of Appellant: Frank Roberts, Address, Decatur, Alabama.

Name and Address of Appellant's Attorney: J. N. Powell, Hartselle, Alabama.

Offense: Violation of National Prohibition Act and Sections — and — and — of said Act.

Original Date of Judgment: Day of —, 194—, at which time the defendant was found guilty on a plea of guilty and was sentenced to two years in the penitentiary.

Brief Description of Judgment or Sentence: Judgment of the Court on the defendant's plea of guilty, found the defendant guilty and sentenced him to two years imprisonment in the Federal Penitentiary, from which he was released on probation and during the probationary period, [fol. 18] his probation was revoked on the — day of —, 194—, and he was sentenced to three years in the penitentiary and it is from this judgment sentencing the defendant to three years' confinement in the Federal Penitentiary that the defendant takes this appeal.

Name of Prison Where Now Confined, If Not on Bail: The defendant is out on bail at the present time.

The above named Appellant hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit, from the judgment last above mentioned on the grounds set forth below:

Frank Roberts, Appellant.

Dated: July 23, 1942.

Grounds of Appeal

The Appellant, Frank Roberts, respectfully assigns as error the judgment of the Court in sentencing him to three years in the Federal Penitentiary, the Court having previously sentenced him to two years on the same offense, and released him on probation, and upon an alleged violation of his probation; the probation was revoked and the appellant was sentenced to three years in the Penitentiary and from this sentence of three years, the appellant respectfully appeals from this judgment of the District Court to the United States Circuit Court of Appeals.

J. N. Powell, Attorney for Appellant.

I hereby certify that I have this day mailed a copy of the foregoing notice of appeal, grounds of appeal to the Hon. Jim C. Smith, United States District Attorney, postage prepaid, Birmingham, Alabama, this July 23, 1942.

J. N. Powell, Attorney for Appellant.

[fol. 19] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 20] That thereafter the following proceedings were had in said cause in the United States Circuit Court of Appeals for the Fifth Circuit, viz:

ARGUMENT AND SUBMISSION

Extract from the Minutes of October 19, 1942

No. 10375

FRANK ROBERTS,

versus

UNITED STATES OF AMERICA

On this day this cause was called, and, after argument by Jasper Newton Powell, Esq., for appellant, and Jack H. McGuire, Esq., Assistant United States Attorney, for appellee, was submitted to the Court.

[fol. 21] OPINION OF THE COURT AND DISSENTING OPINION OF
HOLMES, CIRCUIT JUDGE—Filed November 24, 1942

IN THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH CIRCUIT

No. 10375

FRANK ROBERTS, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

Appeal from the District Court of the United States for
the Northern District of Alabama

(November 24, 1942)

Before Hutcheson, Holmes, and McCord, Circuit Judges
McCord, Circuit Judge:

In April, 1938, the appellant, Frank Roberts, pleaded guilty to charges of stealing goods from an interstate shipment, and of possessing such goods knowing the same to

have been stolen, all in violation of 18 U. S. C. A. § 409. He was fined \$200.00 and sentenced to serve a term of two years in the penitentiary. The fine was paid, and the court suspended the execution of the sentence and placed Roberts on probation for five years under the provisions of the Probation Act, 18 U. S. C. A. § 724. At a subsequent term of court in June, 1942, after a hearing the court revoked the probation, set aside the suspended sentence of two years, and imposed a sentence of three years in the penitentiary. The three years sentence was one that might originally have been imposed, the maximum sentence under each count being ten years.

Appellant contends that the trial court was without power to revoke the two years suspended sentence and then impose a longer sentence of three years. Decision turns upon the construction of the statute relating to revocation of probation, 18 U. S. C. A. § 725:

"At any time within the probation period the probation officer may arrest the probationer without warrant, or the court may issue a warrant for his arrest. Thereupon such probationer shall forthwith be taken before the court. At any time after the probation period, but within the maximum period for which the defendant might originally have been sentenced, the court may issue a warrant and cause the defendant to be arrested and brought before the court. Thereupon the court may revoke the probation or the suspension of sentence, and may impose any sentence which might originally have been imposed."

The statute thus clearly gives to the trial court the power to revoke the probation or the suspension of sentence and to then impose any sentence which might originally have been imposed. This court in *United States v. Antinori*, 59 F. 2d 171, construed the probation statute to provide for retention of the trial court's jurisdiction beyond the judgment term, and upheld the action of the lower court in revoking the original suspended sentence and imposing a new sentence for a shorter term. The court, however, expressly refrained from deciding whether the trial court could, upon [fol. 23] revocation of the probation and suspended sentence, impose a new sentence for a longer term. Also see, *Scalia v. United States*, 62 F. 2d 220. In a later case, *Remer v. Regan*, 104 F. 2d 704, the Circuit Court of Appeals for the

Ninth Circuit, upheld the imposition of an increased sentence upon violation and revocation of probation. The court held that revocation of a two years suspended sentence and imposition of a sentence of imprisonment for three years was authorized by the act and did not constitute double jeopardy under the Fifth Amendment to the Constitution. This decision is in harmony with the opinion of the Circuit Court of Appeals for the Second Circuit in *United States v. Moore*, 101 F. 2d 56, certiorari denied, 306 U. S. 664. We agree with the holding in *Remer v. Regan*, *supra*, that imposition of the increased sentence did not constitute double jeopardy, and that "Under the probation act an increase of sentence is expressly authorized by the statute (18 U. S. C. A. § 725) and, consequently, it is potentially a part of the original sentence."

Under the express terms of the probation act, § 725, payment of a fine, or the making of restitution or reparation to aggrieved parties, may be made the condition of probation. We do not think that the payment of the \$200.00 fine in the case at bar constituted such a partial execution of sentence as would defeat the court's power to grant probation, or to revoke the suspended sentence and impose a new sentence of imprisonment "which might originally have been imposed". The facts of this case do not measure to infraction of the constitutional limitations discussed in *Ex parte Lange*, 18 Wall. 163, 85 U. S. 163; or *United States v. Benz*, 282 U. S. 304, at page 307. *Cf. United States v. Murray*, 275 U. S. 347.

The judgment is Affirmed.

[fol. 24] HOLMES, Circuit Judge, dissenting: .

In *United States v. Antinori*, 59 F. (2) 171, this court held that in revoking a suspended sentence the district court might impose a new one for a reduced term. It upheld the validity of the statute involved, and construed it to provide for retention of jurisdiction beyond the term in cases of probation, but it took pains to note that the power of the court to increase such sentences was not before it.

The statute grants to courts of the United States power to revoke the probation or the suspension of sentence, and to impose any sentence that might originally have been imposed; but implicit in this power is the inhibition of the Fifth Amendment that no one shall be twice put in jeopardy

for the same offense. Prior to the statute, courts of the United States had control of their sentences during the term at which they were made, but this power could not be used to violate the guarantees of personal rights found in the Fifth Amendment. *Ex parte Lange*, 18 Wall. 163. The Probation Act extended this control to a subsequent term, provided it was within the probationary period; but it would be unreasonable to ascribe to the Congress an intention to grant to the courts, at a subsequent term greater control over their judgments than they possessed during the term at which they were entered.

The Probation Act provides that courts of the United States, in crimes not punishable by death or life imprisonment, shall have power to suspend the imposition or execution of sentence and to place the defendant upon probation for a period not exceeding five years. If the imposition of the sentence is suspended, probation granted, and later the probation is revoked, the court may, within the probation period, impose any sentence that might originally have been imposed. The same is true where sentence has been imposed and probation granted, except that the defendant's punishment may not be increased, for to do so [fol: 25] is to put him in jeopardy twice for the same offense. The Probation Act must be construed in harmony with the Fifth Amendment if such construction may reasonably be made from the language employed.

In this case, when the court sentenced the defendant to pay a fine of \$200 and to serve two years imprisonment, and the fine was paid, the court lost the power to amend the prison sentence by increasing it to three years, and the Probation Act may not constitutionally be construed to authorize such amendment.

In *United States v. Benz*, 282 U. S., at page 307, the court said:

"The distinction that the court during the same term may amend a sentence so as to mitigate the punishment but not so as to increase it, is not based upon the ground that the court has lost control of the judgment in the latter case, but upon the ground that to increase the penalty is to subject the defendant to double punishment for the same offense in violation of the Fifth Amendment to the Constitution, which provides that no person shall be subject for the

same offense to be twice put in jeopardy of life or limb'. This is the basis of the decision in *Ex parte Lange*, supra."

I think it was error for the court below to increase the appellant's sentence from two years to three.

[fol. 26]

JUDGMENT

Extract from the Minutes of November 24, 1942

No. 10375

FRANK ROBERTS,

VERSUS

UNITED STATES OF AMERICA

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Alabama, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court, that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

"Homes, Circuit Judge, dissents."

[fol. 29] ORDER DENYING REHEARING

Extract from the Minutes of January 16, 1943

No. 10375

FRANK ROBERTS,

VERSUS

UNITED STATES OF AMERICA

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

[fol. 30] MOTION AND ORDER STAYING MANDATE—Filed
January 28, 1943

CIRCUIT COURT OF APPEALS OF THE UNITED STATES FOR THE
FIFTH CIRCUIT, NEW ORLEANS, LA.

To the Honorable Judges of the Circuit Court of Appeals
for the Fifth Circuit of the United States of America:

No. 10375

In the Matter of FRANK ROBERTS

VS.

UNITED STATES

Comes Frank Roberts, appellant, in the above styled cause and moves the Court to stay the mandate in this cause of action upon the following grounds:

1st. To file a petition in the United States Supreme Court for a writ of certiorari to this Court to send up the proceedings in this cause to the said Supreme Court so the said Court may review said cause and actions of the district Court and this Court.

2nd. That the Supreme Court may review the action of the District Court upon the question of authority of revoking a parole and opposing a longer sentence of three years.

3rd. That the United States Supreme Court may decide whether or not this appellant has been placed in jeopardy twice for the same offence.

Jasper N. Powell, Attorney for Appellant.

Copy of foregoing motions mailed this day to Hon. Jim Smith, properly addressed with proper postage attached thereto.

Jasper N. Powell, Attorney for Appellant.

[fol. 31] UNITED STATES CIRCUIT COURT OF APPEALS FOR THE
FIFTH DISTRICT

No. 10375

FRANK ROBERTS, Appellant,

versus

UNITED STATES OF AMERICA, Appellee

On Consideration of the Application of the appellant in the above numbered and entitled cause for a stay of the mandate of this court therein, to enable appellant to apply for and to obtain a writ of certiorari from the Supreme Court of the United States, It Is Ordered that the issue of the mandate of this court in said cause be and the same is stayed for a period of thirty days from January 16, 1943; the stay to continue in force until the final disposition of the case by the Supreme Court, provided that within thirty days from January 16, 1943 there shall be filed with the clerk of this court the certificate of the clerk of the Supreme Court that the certiorari petition, record and brief have been filed, and that due proof of service of notice thereof under Paragraph 3 of Rule 38 of the Supreme Court has been given. It is further ordered that the clerk shall issue the mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of thirty days from January 16, 1943, unless the above-mentioned certificate shall be filed with the clerk of this court within that time.

Done At New Orleans, La., this 28th day of January, 1943.

(Signed) Leon McCord, United States Circuit Judge.

[fol. 32] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 33] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed April 5, 1943

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: Enter Benton Littleton Britnell. File No. 47,257. U. S. Circuit Court of Appeals, Fifth Circuit. Term No. 19. Frank Roberts, Petitioner, vs. The United States of America. Petition for a writ of certiorari and exhibit thereto. Filed February 20, 1943. Term No. 19, O. T. 1943.

(7009)